

IN THE MATTER OF LICENSE NO. 270478 MERCHANT MARINER'S DOCUMENT NO.
Z-1138047 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Edgar Ingram

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1588

Edgar Ingram

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 30 June 1966, an Examiner of the United States Coast Guard at Duluth, Minnesota, suspended Appellant's seaman's documents for three months outright plus nine months on eighteen months' probation upon finding him guilty of misconduct. This specification found proved alleges that while serving as a Third assistant engineer on board the United States SS CLIFFORD F. HOOD under authority of the document and license above described, on or about 29 September 1965, Appellant wrongfully assaulted and battered, with a piece of pipe, a member of the crew, one Ralph Gates, causing injury.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of several witnesses.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of three months outright plus nine months on eighteen months' probation.

The entire decision was served on 15 July 1966. Appeal was timely filed on 1 August 1966.

FINDINGS OF FACT

On 29 September 1966, Appellant was serving as a Third assistant engineer on board the United States SS CLIFFORD F. HOOD and acting under authority of his license and document while the ship was in a port of the United States, presumably Duluth, Minnesota.

(From this point on, I quote verbatim the Examiner's "Findings of Fact," 3 through 9.)

"3. On 29 September 1965, shortly before midnight, and while the person charged was serving on the eight to twelve watch, Ralph Gates, a Fireman, employed aboard said vessel and assigned to the twelve to four watch, entered the engine room in a drunken condition at a time that the person charged was conversing with the Second Assistant Engineer, who was also assigned to the said twelve to four watch.

"4. Mr. Gates, a contentious person when drinking, who talked in a loud voice and pointed his finger, interfered with the conversation by shouting above the noise of the vessel's generator and pointing at the person charged, and was told by the person charged "Go away Gates. Don't bother me." and was then escorted out of the engine room and into the boiler room by the Second Assistant Engineer.

"5. Mr. Gates again came out of the boiler room and into the engine room and the Second Assistant Engineer again escorted him into the boiler room, told him he was not on watch and ordered him to get his clothes changed and get ready for the watch.

"6. Mr. Gates again returned to the engine room and was told by the person charged he was on a "rain check" meaning his employment was terminable, and Mr. Gates then told the person charged to get out of his way, he was a no good son-of-a-bitch, that he was no good and "never will be", and was again escorted out of the engine room by both the person charged and the Second Assistant Engineer. The person charged then hooked the door between the boiler room and engine room to prevent Mr. Gates from again returning.

"7. Mr. Gates again returned to the engine room by a circuitous route and both he and the person charged commenced to shout at each other and Mr. Gates threatened to take the person charged out on the dock and break his head. He called the person charged a number of "filthy" names, and the person charged pleaded with him in words substantially, "Gates, for Christ's sake, go on and leave me alone". "I want to wash up and get out of here," and the person charged attempted to walk away from Mr. Gates. Mr. Gates again told the person charged to come out on the dock and he proceeded toward the person charged with both of his fist doubled. The person charged, although he had an opportunity to escape, (I could have turned around and run, run aft, and up through the fantail but I still hadn't changed clothes") picked up a piece of pipe and told Mr. Gates, "If you don't get away from me, I'll hit you with this piece of pipe". Mr. Gates continued to come toward the person charged, and the person charged struck him an unknown number of times with the pipe, at least twice, causing Mr. Gates' arms to become lacerated, one of which lacerations required two stitches to close the wound. Mr. Gates left the room and the person charged began to wash himself preparatory to leaving the engine room.

"8. Mr. Gates again returned to the engine room and the person charged said "Gates, go on get out of here so I can wash up and get away from this place". But, Mr. Gates approached the person charged and tried to drip blood on him, or blood dripped because of the fact that Mr. Gates' fist was doubled. The person charged did not want to get blood upon

him and he picked up a longer pipe and "I acted like I was going to hit him in the groin, and I said", "Gates, you come at me again and I'm going to pass you right through the middle" and Mr. Gates kept dodging and apparently made several lunges at the person charged but was forced back and received no further injuries as Mr. Becker, a coal passer, came by, intervened on the side of Mr. Gates, and the series of incidents were ended.

"9. The person charged has a prior unblemished record. There is no evidence he engaged in prior fights. There is no indication he ever used a weapon previously or that he is a man of unusual truculence, except as appears from the circumstances of the assault herein. There is no evidence of character traits or personality disorders to indicate he is possessed of such a vicious character that permitting him to sail under his licenses and documents would be clearly a threat to the safety of life at sea."

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant acted in legitimate self-defense.

APPEARANCE: James J. Courtney & Sons, Duluth, Minnesota, by James J. Courtney Jr., Esquire, at the hearing, and Norman W. Bouchard, MEBA representative, on appeal.

OPINION

The Examiner found the charge proved on 16 November 1965, and found on 30 June 1966 that Appellant had struck his alleged victim "an unknown number of times with the pipe, at least twice". The evidence on this point, the number of blows struck was conflicting. The victim himself testified first to a certain number of blows (in excess of two) and then shortly thereafter almost doubled the number. Appellant testified to two blows only.

The Examiner's caution on 30 June 1966 indicates a tendency to place more credence in Appellant's version of "two blows" than in the victim's "seven or more". To be consistent with the Examiner's later appraisal of the evidence, I am inclined also to accept two blows as the truth.

II

The Examiner noted that when Gates, after the earlier disturbances, advanced upon Appellant with clenched fists, Appellant had an escape route out of the engine room. This fact is irrelevant to a proper construction of the doctrine of "retreat" in the face of assault. Appellant not only had a right to be where he was; he had a duty to remain there. He was a licensed officer on duty in an engine room, with an obligation not to leave it except with proper authority or under a necessity.

So long as he had the means available to repel the assault, there was no necessity for him to do anything else.

The only question then would be whether the force used was greater than that reasonably to be used under the circumstances.

Appellant did no more than use the means available to repel the attack made upon him. Actually, he did not even cause his "victim" to desist, because the "victim" came back once more to resume his aggressive actions, and it was only when Appellant made a final threat of greater harm from a larger weapon that the entire episode was concluded.

CONCLUSION

It is concluded that Appellant acted in legitimate self-defense, and that the charge of assault and battery was unfounded.

ORDER

The order of the Examiner at Duluth, Minnesota on 30 June 1966, is VACATED, and the charges DISMISSED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 2nd day of November 1966.

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